

FCC MAIL SECTION

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Federal Communications Commission

DA 97-633

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-94
Table of Allotments,	)	RM-8790
FM Broadcast Stations.	)	
(Eufaula, Wagoner, Warner, and Sand	)	
Springs, Oklahoma) <sup>1</sup>	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: March 26, 1997**

**Released: April 4, 1997**

By the Chief, Allocations Branch:

1. At the request of Tri-Mac Broadcasting ("petitioner"),<sup>2</sup> the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 4735 (1996), proposing the reallocation of Channel 271A from Wagoner to Warner, Oklahoma, and the modification of Station KRQZ-FM's license to specify Warner as its community of license. To accommodate the allotment at Warner, we also proposed the substitution of Channel 273C3 for Channel 272A at Eufaula, Oklahoma. Petitioner filed comments and reply comments. In addition, a counterproposal was filed by Music Sound Radio, Inc. ("Music Sound"), licensee of Station KTFX(FM), Sand Springs, Oklahoma.<sup>3</sup>

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<sup>1</sup> The community of Sand Springs has been added to the caption.

<sup>2</sup> The comments and reply comments filed on behalf of the petitioner reflect Tri-Mac Broadcasting as the licensee of Station KRQZ-FM. However, after the record closed, the pending assignment of license for Station KRQZ-FM was consummated between Tri-Mac Broadcasting and K95.5, Inc. K95.5, Inc. filed a statement notifying the Commission of the change in ownership, affirming the representations and covenant made by Tri-Mac Broadcasting in this proceeding, and requesting leave to substitute itself in the place of Tri-Mac Broadcasting as the now current licensee of Station KRQZ-FM. In accordance with its request, petitioner designates both Tri-Mac Broadcasting and K95.5, Inc.

<sup>3</sup> Music Sound requests the substitution of Channel 272C2 for Channel 272A at Sand Springs and the modification of Station KTFX(FM)'s license to specify the higher powered channel. Music Sound's proposal has not been accepted as a counterproposal herein. The allotment of Channel 272C2 at Sand Springs is contingent upon, not in conflict with, the reallocation of Channel 271A from Wagoner to Warner and the substitution of Channel 273C3 for Channel 272A at Eufaula. Music Sound recognizes this fact but states that because the proposal is in "direct conflict with the existing allotment of Channel 271A at Wagoner," the proposal is an acceptable counterproposal. This is not the case. A counterproposal is a "proposal for an alternate and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made." See Implementation of BC Docket 89-90 to Increase the Availability of FM Broadcast Assignments, 5 FCC Rcd 931 (1990). The proposal advanced in the counterproposal must conflict with the proposed change in the Table of Allotments, not

2. Petitioner states that its proposal complies with Section 1.420(i) of the Commission's Rules and would serve the public interest by providing Warner with its first local aural transmission service and enable Station KRQZ-FM to improve the station's facilities to those of a full Class A. Because Station KRQZ-FM proposes to relocate its transmitter, petitioner has provided a gain and loss study showing that the reallocation of Channel 271A to Warner will enable the station to provide service to 32,572 persons within a 2,296 square kilometer (886 square mile) area. Within this gain area, petitioner states that Station KRQZ-FM will provide a seventh service to 80 people, a ninth service to 4,591 persons and a tenth service to 7,114 persons. The loss area occasioned by the reallocation, according to the petitioner, amounts to 28,550 persons within a 1,473 square kilometer (568 square mile) area. While recognizing that the Commission is concerned with the loss of an existing service which the public has a legitimate expectation to continue receiving, it states that this loss is mitigated by the fact that the entire population within the loss area will continue to receive at least six fulltime aural services and that 91.6% of the people residing within the loss area will receive thirteen or more fulltime stations. Petitioner also points out that Station KRQZ-FM is unable to increase power to a full 6 kW if it remains licensed to Wagoner and that the channel is also the only commercial channel which can be allotted to Warner.

3. Petitioner requests that the allotment be made at the coordinates requested in the petition (35-33-27; 95-14-41) and not those set forth in the Notice. Because Station KRQZ-FM is an existing station, it contends that it is appropriate for the Commission to use the coordinates suggested by the licensee for the new allotment. Generally, the Commission does propose the allotment of channels which are to be used by existing stations at the coordinates specified in the petition for rule making. In this instance, at the time the petition was filed, the allotment of Channel 271A at Warner met the mileage separation requirements to all existing stations and outstanding construction permits. However, it was short-spaced to the reference coordinates for Station KEOK, Channel 269C3, Tahlequah, Oklahoma. Therefore, rather than return the petition as unacceptable because it was contingent upon Station KEOK being licensed at the transmitter site set forth in the outstanding construction permit, a non-conflicting transmitter site was proposed for the allotment at Warner. Now that Station KEOK has been licensed at the site specified in the construction permit (BLH-961003KA), we will consider the allotment of Channel 271A at Warner at the petitioner's preferred transmitter site.

#### Technical Summary

4. Channel 271A can be allotted to Warner in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.2 kilometers (0.7 miles) northwest to avoid a short-spacing to Station KENA-FM, Channel 271C3, Mena, Arkansas, and

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the existing arrangement. Therefore, Music Sound's counterproposal will be dismissed. However, because of the outcome of this proceeding, Music Radio may, of course, file its "counterproposal" as a new petition for rule making.

to accommodate petitioner's desired transmitter site.<sup>4</sup>

5. Based upon the information presented, we find that the reallocation of Channel 271A to Warner (population 1,462 persons) will result in a preferential arrangement of allotments since it will provide the community with its first local aural transmission service without depriving Wagoner of its sole local aural transmission service. In addition, it will enable Station KRQZ-FM to improve its facilities to those of a full 6 kW Class A station. Therefore, in accordance with the provisions of Section 1.420(i), we will modify the license of Station KRQZ-FM to specify Warner as its community of license. We need not order Station KCES, Eufaula, to specify operation on Channel 273C3 in lieu of Channel 272A since that action has already been authorized by the grant of the station's one-step application and the Table of Allotments has been amended to reflect the change. See Report and Order, 11 FCC Rcd 10449 (1996).

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 19, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Wagoner, Oklahoma	---
Warner, Oklahoma	271A

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of K95.5, Inc. for Station KRQZ-FM, IS MODIFIED to specify Warner, Oklahoma, in lieu of Wagoner, Oklahoma, as its community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing

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<sup>4</sup> The coordinates for Channel 271A at Warner are 35-33-27 North Latitude and 95-14-41 West Longitude.

FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, K95.5, Inc. licensee of Station KRQZ-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

9. IT IS FURTHER ORDERED, That the counterproposal filed by Music Sound Radio, Inc., to substitute Channel 272C2 for Channel 272A at Sand Springs, Oklahoma, and modify the license of Station KTFX(FM) accordingly, IS DISMISSED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau